

PUBLIC MATTER

STATE BAR COURT OF CALIFORNIA
HEARING DEPARTMENT – LOS ANGELES

In the Matter of)	Case No.: 10-C-07667-RAH
)	
JAC FRANCOIS POULIOT,)	DECISION AND ORDER OF
)	INVOLUNTARY INACTIVE
Member No. 62431,)	ENROLLMENT
)	
<u>A Member of the State Bar.</u>)	

Respondent Jac Francois Pouliot (respondent) was convicted of violating Penal Code section 245, subdivision (a)(1) (assault with a deadly weapon), a felony which may or may not involve moral turpitude or constitute other misconduct warranting discipline. Upon finality of the conviction, the review department issued an order referring this matter to the hearing department for a hearing and decision recommending the discipline to be imposed if the facts and circumstances surrounding the violation involved moral turpitude or other misconduct warranting discipline.¹ Respondent failed to participate either in person or through counsel, and his default was entered. The State Bar filed a petition for disbarment under rule 5.85 of the Rules of Procedure of the State Bar.²

¹ In an order filed on August 24, 2011, the review department placed respondent on interim suspension effective September 12, 2011.

² Unless otherwise indicated, all references to rules are to this source. Rule 5.345(C) makes the default procedures in rules 5.80-5.86, with certain exceptions, applicable in conviction proceedings.

Rule 5.85 provides the procedure to follow when an attorney fails to participate in a disciplinary proceeding after receiving adequate notice and opportunity to be heard. The rule provides that if an attorney's default is entered for failing to respond to the notice of hearing on conviction (NOH), and the attorney fails to have the default set aside or vacated within 180 days, the State Bar will file a petition requesting the court to recommend the attorney's disbarment.³

In the instant case, the court concludes that the requirements of rule 5.85 have been satisfied, and therefore, grants the petition and recommends that respondent be disbarred from the practice of law.

FINDINGS AND CONCLUSIONS

Respondent was admitted to practice law in this state on December 18, 1974, and has been a member since then.

Procedural Requirements Have Been Satisfied

On September 6, 2011, the State Bar Court filed and properly served the NOH on respondent by certified mail, return receipt requested, at his membership records address. The NOH notified respondent that his failure to participate in the proceeding would result in a disbarment recommendation. (Rule 5.345.) The return receipt for the NOH was returned indicating that the NOH was actually delivered to respondent's membership records address on September 20, 2011 (the signature on the return receipt is illegible).

Respondent had actual notice of these proceedings, as he communicated with one of the court's case administrators by email in September 2011,⁴ and he participated in a status

³ If the court determines that any due process requirements are not satisfied, including adequate notice to the attorney, it must deny the petition for disbarment and take other appropriate action to ensure that the matter is promptly resolved. (Rule 5.85(E)(2).)

⁴ Effective February 1, 2010, all attorneys are required to maintain a current email address to facilitate communications with the State Bar. (Cal. Rules of Court, rule 9.7(a)(2).)

conference that was held on September 29, 2011. In addition, the State Bar deputy trial counsel spoke to respondent on at least two occasions between about late September and mid-October 2011. In their last telephone conversation on October 14, 2011, the deputy trial counsel told respondent that the State Bar was going to file a motion seeking the entry of respondent's default for not filing a response to the NOH, and respondent told the deputy trial counsel that he did not intend to file a response to the NOH.

Respondent failed to file a response to the NOH. On October 14, 2011, the State Bar filed and properly served a motion for entry of respondent's default. The motion complied with all the requirements for a default, including a supporting declaration of reasonable diligence by the State Bar deputy trial counsel declaring the additional steps taken to provide notice to respondent. (Rule 5.80.) The motion also notified respondent that if he did not timely move to set aside his default, the court would recommend his disbarment. Respondent did not file a response to the motion, and his default was entered on November 1, 2011. The order entering the default was served on respondent at his membership records address by certified mail, return receipt requested. The court also ordered respondent's involuntary inactive enrollment as a member of the State Bar under Business and Professions Code section 6007, subdivision (e), effective three days after service of the order, and he has remained inactively enrolled since that time.

Respondent also did not seek to have his default set aside or vacated. (Rule 5.83(C)(1) [attorney has 180 days to file motion to set aside default].) On May 8, 2012, the State Bar filed the petition for disbarment. As required by rule 5.85(A), the State Bar reported in the petition that: (1) it has had no contact with respondent since the default was entered; (2) there are no pending disciplinary or investigative matters against respondent; (3) respondent has no prior record of discipline; and (4) the Client Security Fund has not made any payments resulting from

respondent's conduct. Respondent did not respond to the petition for disbarment or move to set aside or vacate the default. The case was submitted for decision on June 5, 2012.

The Admitted Factual Allegations Warrant the Imposition of Discipline

Upon entry of respondent's default, the factual allegations set forth in the State Bar's statement of facts and circumstances surrounding respondent's conviction are deemed admitted and no further proof is required to establish the truth of such facts. (Rules 5.345(C) & 5.82.) As set forth below in greater detail, respondent's conviction for assault with a deadly weapon supports the conclusion that respondent violated a statute, rule or court order that would warrant the imposition of discipline. (Rule 5.85(E)(1)(d).)

Case Number 10-C-07667 (Conviction Matter)

Respondent was convicted of violating Penal Code section 245, subdivision (a)(1) (assault with a deadly weapon) as a result of an incident with two of his neighbors. Respondent's two neighbors were having a party and sitting on their patio, when respondent, who lives across from them, started yelling and cursing at them because their dog was barking incessantly. Respondent pointed a gun and a red laser at the two neighbors. He pointed the laser directly on one of the neighbor's foreheads, telling her "he would show her what he was going to do." When the police arrested respondent a little while later, they recovered a small red laser from one of the front pockets of respondent's pants and two *loaded* hand guns (a 9mm semi-automatic pistol and a .357 magnum revolver) from respondent's home. The red laser found in respondent's pocket fit the loaded 9mm semi-automatic pistol.

Assault with a deadly weapon is a crime that may or may not involve moral turpitude or other misconduct warranting discipline, depending upon the facts and circumstances surrounding the conviction. The court finds that the facts and circumstances surrounding respondent's conviction do not involve moral turpitude, but do constitute other misconduct warranting

discipline. Conviction of a crime involving other misconduct warranting discipline is grounds for discipline. (*Young v. State Bar* (1990) 50 Cal.3d 1204.)

Disbarment is Mandated under the Rules of Procedure

Based on the above, the court concludes that the requirements of rule 5.85(E) have been satisfied, and respondent's disbarment must be recommended. In particular:

- (1) the NOH was properly served on respondent under rule 5.25;
- (2) respondent had actual knowledge of these proceedings prior to the entry of his default, as he communicated with one of the court's case administrators, participated in a status conference, and had at least two telephone conversations with the State Bar deputy trial counsel;
- (3) the default was properly entered under rule 5.80; and
- (4) the factual allegations in the statement of facts and circumstances surrounding respondent's conviction deemed admitted by the entry of the default, support a finding that respondent violated a statute, rule or court order that would warrant the imposition of discipline.

Despite actual notice and opportunity, respondent failed to participate in this disciplinary proceeding. As set forth in the Rules of Procedure of the State Bar, the court must recommend his disbarment.

RECOMMENDATION

Disbarment

The court recommends that respondent Jac Francois Pouliot be disbarred from the practice of law in the State of California and that his name be stricken from the roll of attorneys.

California Rules of Court, Rule 9.20

The court also recommends that respondent be ordered to comply with the requirements of California Rules of Court, rule 9.20 and to perform the acts specified in subdivisions (a) and

(c) of that rule within 30 and 40 days, respectively, after the effective date of the Supreme Court order in this proceeding.

Costs

The court further recommends that costs be awarded to the State Bar in accordance with Business and Professions Code section 6086.10, such costs being enforceable both as provided in Business and Professions Code section 6140.7 and as a money judgment.

ORDER OF INVOLUNTARY INACTIVE ENROLLMENT

In accordance with Business and Professions Code section 6007, subdivision (c)(4), the court orders that Jac Francois Pouliot, State Bar number 62431, be involuntarily enrolled as an inactive member of the State Bar of California, effective three calendar days after the service of this decision and order. (Rule 5.111(D).)

Dated: August 6, 2012.

RICHARD A. HONN
Judge of the State Bar Court